

THE CHAIRMAN: Delegate James.

DELEGATE JAMES: Let me confer with my co-sponsor.

THE CHAIRMAN: Delegate James.

DELEGATE JAMES: Mr. Chairman, after further considering it, I think there is a difference, in that implementation probably means, and is subject to the interpretation, that the legislature could really do something in furtherance of the right of representation so that it would not really get at the thing that I am talking about, to wit, fractionalization of unions within the straight structure.

Now, I am not saying it should necessarily be one big union because this might very well be unfair to certain areas but it seems to me that the governor and the legislature should have the power to recognize either all of the state employees in one large union or to say that there should be a special type of representation in certain specified areas for fractional parts of the state organization.

I think it would be clearer if we stuck to the original language.

THE CHAIRMAN: Are there any further questions of the sponsor of the amendment?

Delegate Sickles.

DELEGATE SICKLES: Delegate James —

THE CHAIRMAN: Delegate James has only one minute remaining.

DELEGATE SICKLES: Delegate James, I think the legislative history is sufficiently clear to warrant not including this language. When I started off the questioning of Delegate Bothe, I pretty much established the fact that the legislature would have the authority to modify this right. The duty to bargain normally will involve appropriate bargaining units, the method of determining the majority, and the right itself.

The concept in Amendment No. 21 does not go that far. It is merely the right to organize.

THE CHAIRMAN: What is the question?

DELEGATE SICKLES: To improve your amendment, you talk in terms of procedural activities and regulations. Would you agree to include the word "procedural" before the word "regulations", if that is your intent?

THE CHAIRMAN: Delegate James.

DELEGATE JAMES: I do not believe that is satisfactory with either me or my co-sponsor, although I think to a large extent the amendment is designed to handle the procedural aspects of the thing.

But I do not believe the word "procedural" would encompass a substantive matter of exactly which unions the State would recognize in conforming to this constitutional adjunctive.

I think the State ought to have the basic power to do this. Now, carrying it over to the private sector, the State, I think, even in the private sector, should have the right such as I believe you have in the federal law — and this is done without any constitutional provision — to lay down rules and regulations under which unions will be recognized after taking appropriate votes. This should be a flexible matter handled at the legislative level.

Now, once you have achieved the constitutional right, and this is a recognition of it in the constitution, it seems to me that it is a small concession to say that the legislature can adjust the right.

THE CHAIRMAN: Does any delegate want to speak in opposition?

Delegate Scanlan.

DELEGATE SCANLAN: I must oppose it. The necessity for it emphasizes the lack of wisdom in enacting Amendment No. 21. You have cast into the constitution the right to organize, a right which has always been statutory as, for example, the right to bargain collectively in the Wagner Act. It is a fundamental statutory right, but since it was in the statute and not the constitution, the Congress was not precluded in the Taft-Hartley Act, and some others that have followed, from laying down restrictions upon carrying that right to the nth power.

Unlike freedom of assembly and freedom of religion, the right to bargain collectively must be limited in some respects and on many occasions. Delegate Sickles has alluded to some and Delegate James to others.

The danger is by enacting Amendment No. 21 it might be argued that we have stripped the plenary power of the legislature in this field completely. I accept Delegate Bothe's explanation that that was not the intention of Amendment No. 21 and Delegate Sickles' representations to the same effect.